(Testimony of Milton R. Evans.)

Q. Did you candle some of these eggs in order to determine the quality of the eggs?

A. I did.

Q. Where did you do that work?

A. As I recall, it was in the dry storeroom on the vessel that we had darkened.

Q. You then took the eggs onto the vessel, did you? A. Yes, sir.

Q. How many cases of eggs did you take onto the vessel?

A. As I recall, the eggs were loaded before we went on the vessel. In other words, they were loading from the dock to the vessel while we were there, and we designated certain cases that we would use for samples.

Q. How many cases did you so indicate?

A. Six of them.

Q. Of these six cases, you candled them all?

A. Yes, sir.

Q. On the first case, how many eggs in that crate did you candle? A. 100.

Q. Did you find any paper of any sort in that case when you [2433] opened it?

A. Yes. When we removed the top from this case there was a card with the penciled word "Pullets."

Q. I show you Exhibit No. 39 for Idenification, and I will ask you if you can identify this card.

A. That appears to be the same as I saw at that time.

(Testimony of Milton R. Evans.)

Q. Do you find your initials on this card identifying it?

A. I do not, unless my eyes—not unless there is something there that I do not see.

Q. You spoke of finding a card such as this in that first case. A. Yes.

Q. Where was it?

A. It was laying on top of the top flat in that case immediately under the wood top.

Q. Was there any marking on this first case on the exterior, or any place else in the case?

A. There was no inspection stamp of any kind.

Q. There was no inspection stamp?

A. No.

Q. In examining the eggs in that first case by candling what did you determine?

Mr. Faulkner: Is this the first case, Mr. Pratt?

Mr. Pratt: Yes.

Mr. Faulkner: Yes.

The Witness: I determined they were not processed. There were 6 percent Grade AA, 51 percent Grade A, 35 percent Grade B, 6 percent Grade C, and 2 inedible eggs out of the hundred I examined. [2434]

Mr. Pratt: Q. How did that case grade?

A. That would grade a Grade B.

Q. You say there were some inedible eggs in the case? A. Yes, sir.

Q. Would that affect the grading of the case?

A. You could not apply a Consumer grade on

(Testimony of Milton R. Evans.)

the eggs in that case on the basis of the inedible eggs.

Q. There would be no grade, you mean?

A. Yes.

Q. Eliminating that, those inedible eggs from consideration, the eggs would then grade what?

A. Grade B.

Q. Did you weigh the eggs in that case?

A. Yes.

Q. What was the net weight of the eggs in that case? A. 33 pounds, 12 ounces.

Q. Was that weight below the minimum of grades acceptable to the Department of Agriculture or the Army?

A. It is. The net weight required by the Department of Agriculture for even small eggs is 34 pounds.

Q. Further, therefore, how were those eggs to be regarded in accordance with the weight you found?

A. There is no official designation. They would be referred to as "Peewees."

Q. What is the difference between "Peewee" eggs and Pullet eggs?

A. Well, it is a matter of useage. Most commonly "pullets" are used to indicate small eggs, and "Peewee" is undersized eggs, that would be smaller than small.

Q. Now, the next case that you candled, how many eggs did you [2435] remove from the second case? A. One hundred.

(Testimony of Milton R. Evans.)

Q. Was that case stamped with a Department of Agriculture stamp?

A. No, sir, this was not stamped with an inspection stamp.

Q. Were there any markings on that case?

A. Yes, on the lid of this case was also penciled the word "Pullets."

Q. That was on the cover, is that right?

A. Yes, near one end.

Q. Were these eggs processed?

A. They were not.

Q. What was the result of your candling in determining the grade of the case?

A. There were 11 per cent Grade AA, 58 per cent Grade A, 27 per cent Grade B, 3 per cent Grade C, 1 per cent inedible, Mixed Rot.

Q. How would those grade?

A. They could not, there would be no grade on the basis of the inedible.

Q. Eliminating that from consideration, how would they be graded?

A. They would be a Grade B.

Q. The weight of that second case was what, the net weight? A. 34 pounds, 2 ounces.

Q. How would that be regarded, as far as weight is concerned?

A. That would be barely within the requirements of 34 pounds for Smalls.

Q. Small? A. Yes.

Q. How far was that, as far as weight is concerned, from being a Medium egg?

(Testimony of Milton R. Evans.)

A. 5 pounds and 14 ounces light.

Q. The next case that you examined, the third case, on the Gilbert Hitchcock, was that case stamped with a Department of [2436] Agriculture stamp? A. It was.

Q. As of what date? A. April 29, 1944.

Q. What was the result of your candling?

A. I found 29 per cent Grade AA, 42 per cent Grade A, 24 per cent Grade B, 2 per cent Checks, 1 per cent Small Meat Spot, and 2 per cent inedibles, that is mixed rots.

Q. Again, on account of inedibles, there was no grade? A. That's right.

Q. Eliminating that from consideration, what would the eggs grade?

A. They would have been Grade B.

Q. In your examination of these eggs, were there any other characteristics that you observed?

A. The fact it was a case of all brown eggs, that sometimes would be a little more difficult to grade because light does not penetrate the shell of the brown egg as well as it does a white shell egg.

Q. In spite of the fact they were all brown eggs, were you able to determine by candling just what the grade was? A. Yes.

Q. The next case you examined on the Gilbert Hitchcock, the fourth case, was that a standard case?

A. Yes, it had the Department of Agriculture stamp.

Q. Dated the 29th of April? A. Yes.

(Testimony of Milton R. Evans.)

Q. What label was on this case?

A. It had the same type of green label, Biddy, Medium.

Q. Were all these eggs labeled with the green Biddy egg label? A. Yes. [2437]

Q. Marked, "Medium"? A. Yes.

Q. What did you determine in regard to the eggs in this fourth case?

A. It contained 60 per cent Grade AA, 26 per cent Grade A, 12 per cent Grade B, 1 per cent Grade C, 1 Check.

Q. How did the whole case grade?

A. Grade A, somewhat below Grade AA.

Q. How was the size of the eggs in that case, did you weigh it?

A. Yes. The weight was 39 pounds, 12 ounces.

Q. How is that regarded?

A. That is under the minimum requirements for Mediums.

Q. Slightly below the necessary minimum weight? A. Yes.

Q. The fifth, was that a stamped case or an unstamped case?

A. It was not stamped with the inspection stamp.

Q. Was there a green label on it?

A. Yes.

Q. Marked "Medium"? A. Yes.

Q. Were these eggs processed?

A. They were not processed.

Q. You have already testified that the other

(Testimony of Milton R. Evans.)

cases that were not stamped contained eggs that were not processed? A. That's right.

Q. How do you determine that fact, Major?

A. By physical appearance.

Q. What is the difference in physical appearance between eggs that have been processed and those that have not been processed?

A. Eggs that have been recently processed still have the adherence to the surface, like anything that mineral oil has [2438] been applied to, and would have several spots of oil on the filler containing the egg, and it can be palpitated by the finger.

Q. Were you able, after a lapse of a considerable period of time, to tell whether eggs are processed or plain?

A. Ordinarily it is not difficult to determine.

Q. Now, these eggs in this case No. 5, you say there was no stamp, and they were not processed. Now, in candling a hundred of those eggs what did you determine as to the grade?

A. Just the name grade or the percentage?

Q. The grade of the eggs.

A. They would have been a Grade B, slightly under Grade A.

Q. How about the number of AA eggs in that case?

A. There were 36 per cent AA in that case.

Q. What percentage of A's? A. 36.

Q. B?

A. I believe—I said they would have made a

(Testimony of Milton R. Evans.)

grade. Yes, there were 3 inedible eggs there which would not permit the designation of the letter grade.

Mr. Faulkner: How many?

Mr. Pratt: 3 inedible eggs out of the hundred.

Q. How many B eggs were there?

A. 24 per cent.

Q. And the case graded what?

A. With the exception of the inedibles it would still have been a Grade B.

Q. Grade what? A. Grade B.

Q. Did you find a C Grade egg in that case?

A. Yes, one. [2439]

Mr. Faulkner: May I get it, 36, 36, and 24, 96 per cent AA, A and B.

The Witness: And still 1 per cent Check, apparently you did not record that, and 3 per cent inedibles.

Mr. Pratt: Q. How many inedible eggs in that case? A. 3 per cent of the sample.

Q. That is 3 out of the hundred eggs you sampled? A. Yes.

Q. How about the weight of that case?

A. 33 pounds, 12 ounces.

Q. That would be classified as "Peewee" again, is that right? A. Yes.

Q. You say they had green labels marked "Medium," is that correct? A. Yes.

Q. How about the sixth case which you examined on the Gilbert Hitchcock?

A. It had an inspection stamp applied to one end. It had 65 per cent grade AA, 20 per cent

(Testimony of Milton R. Evans.)

Grade A, 60 per cent Grade B, 3 per cent Grade C, 5 per cent Checks, 1 per cent Loss, inedible.

Q. How did it grade?

A. Well, with the one inedible, there would be no appropriate designation.

Q. Eliminating that feature, what would the grade be? A. It would have been a grade A.

Q. How about the weight?

A. It was 39 pounds even.

Q. Therefore, that classified as what?

A. My figure here is a little—in either event; my figure here is blurred, it places it in a small class.

Q. By how much?

A. 2 pounds. It should be 38 instead of 39.

Q. The eggs weighed 38 pounds?

A. Yes.

Q. That particular case graded Grade A "Small"? A. Yes.

Mr. Pratt: I would like to exhibit 47 and 144.

Q. Major, I direct your attention to this Exhibit 47 for Identification, and I will ask you whether you can identify that label. Has it got your initials on it anywhere? You will have to take it out there.

A. It is similar to the label we saw, but I don't see my initials anywhere on it.

Q. That is similar to the label you saw on all those cases on the Gilbert Hitchcock?

A. Yes, sir.

Mr. Pratt: If the Court please, the testimony that this witness has given in regard to the eggs

(Testimony of Milton R. Evans.)

on the Gilbert Hitchcock relates to the fifth count of the indictment and at this time I would like to read to the jury a portion of the exhibit, No. 144 in evidence, which is the invoice of Nye & Nissen to the Government in connection with this particular shipment.

Mr. Faulkner: While Mr. Pratt is doing that, may the clerk mark the memorandum the witness used as Defendant's exhibit next in order for identification?

(The document was marked Defendants' Exhibit AZ for Identification.)

Mr. Pratt: Q. This invoice dated May 1, 1944, addressed to the Government by Nye & Nissen, and among the items it includes 55 cases of eggs, Medium, Processed, AA, 1650 dozen at 41½ cents, $66.50. There are other items, and there are various [2441] rubber stamps and statements similar to the ones I read in connection with the last exhibit which I read to the jury.

Q. Referring again, Major Evans, to Exhibit 47 for Identification, I notice that this exhibit bears a Department of Agriculture stamp on it. Did that character of stamp appear on the cases which you mentioned which were "Peewees" and unprocessed?

A. The inspection stamp did not appear on the ones that you describe, the ones that were the smaller in size, weight and not processed.

Q. I now direct your attention, Major Evans,

(Testimony of Milton R. Evans.)

to your consideration of eggs on the steamship Phillipa. Do you recall that instance?

A. I have an inspection form here covering that inspection.

Q. You made an inspection of eggs on that boat, did you? A. Yes, I did.

Q. On what date?

A. The 5th of May, 1944.

Q. Where was that?

A. At one of the berths at the Naval Supply Depot in Oakland.

Q. With whom did you go on that errand?

A. Agent Johnson.

Q. Of the FBI? A. Yes.

Q. How many cases of eggs were involved in that examination? A. There were 65 cases.

Q. Where were they when you examined them?

A. As I recall they were in the cooler aboard the vessel.

Q. Do you recall counting the number of cases?

A. In the company of Agent Johnson I helped count them, yes.

Q. How were these cases marked?

A. Most of them, at least a portion of them had a Department of Agriculture stamp, as well as the green "Biddy" label.

Q. Did all the 65 cases bear labels of Nye & Nissen, the "Biddy" egg label?

A. To the best of my memory they did.

Q. What color? A. Green label.

Q. That is the medium label, is that right?

(Testimony of Milton R. Evans.)

A. Yes.

Q. How many of these eggs, of these crates of eggs, had the Department of Agriculture inspection stamp on them?

A. 50 of the cases had the inspection stamp.

Q. Then how many bore no stamp?

A. 15. [2442]

Q. Where did you examine these eggs, Major Evans?

A. As I recall, it was in a dry storage room on this vessel, a large—it looked like a converted cooler.

Q. And how many cases did you examine?

A. I examined six cases by candling and weighed a seventh one.

Q. What did you find from examining the first of these that you examined by candling?

A. There was no inspection stamp applied to the label. I found eight per cent Grade AA, forty-six per cent Grade A, thirty-seven per cent Grade B, six per cent Grade C and three per cent checks.

Q. Did you find any rots?

A. None, no sir.

Q. How did those eggs grade in that case?

A. They would have graded a Grade B.

Q. Did you weigh the eggs in that case?

A. Yes sir.

Q. With what result?

A. The net weight was 34 pounds, 2 ounces.

Q. And how would they be classified?

(Testimony of Milton R. Evans.)

A. They barely would come within the classification of Small, U. S. Small.

Q. The minimum weight for Small is 34 pounds?

A. Yes sir.

Q. And these weighed what?

A. 34 pounds, 2 ounces.

Q. Now, the second case, the next case which you examined by candling.

A. It had a Department of Agriculture AA quality stamp dated April 27, 1944. There were nine per cent Grade AA.

Q. Nine per cent, you say?

A. Yes sir, and forty-nine per cent Grade A; twenty-five per cent Grade B, sixteen per cent Grade C, and one inedible egg.

Q. Disregarding the inedible egg, which would give it no grade, as I understand it, how would you grade that case of eggs?

A. That would have graded a Grade B.

Q. And how about the weight of the eggs in that case?

A. It was forty pounds, twelve ounces.

Q. That would then be classified as Medium, is that right? A. Yes sir.

Q. Now then, the next case?

A. It didn't have that inspection stamp and had a card similar to the previous example with the word "Peewee".

Mr. Pratt: May I have Exhibit 41, please?

Q. I show you this card, Exhibit 41 for Identification. Can you identify that card?

(Testimony of Milton R. Evans.)

A. It looks to be the same as I saw on that occasion. I do not have my initials on it.

Q. It does not bear your initials?

A. No sir.

Mr. Faulkner: Maybe the one he put his initial on is not here, Mr. Pratt.

Mr. Pratt: This one hasn't his initial, I am sure.

Q. You say that there was a card in that case?

A. Yes sir.

Q. What did it say on the card?

A. It had the word "Peewee" written in pencil on it.

Q. What was the result of your inspection of that case?

A. I found 52 per cent Grade AA and 33 per cent Grade A, 11 per cent Grade B, 3 per cent Grade C, and one inedible egg. [2444]

Q. What was the matter with the inedible egg?

A. It was a mixed rot.

Q. Disregarding the fact that there was an inedible egg among the one hundred that you candled, how did you grade the eggs in that case?

A. Grade A.

Q. How about the weight?

A. It was 34 pounds and 12 ounces.

Q. And classified as what?

A. Medium—or Small.

Q. That was within twelve ounces of the minimum weight for a Small egg, is that right?

A. Yes.

(Testimony of Milton R. Evans.)

Q. How about the next case that you examined?

A. It had a Department of Agriculture inspection stamp, AA quality, the same date.

Q. They all had this green label on, did they not? A. Yes, on all cases.

Q. How did the eggs grade in it individually?

A. 15 per cent Grade AA, 57 per cent Grade A, 23 per cent Grade B, 3 per cent Grade C, one per cent checks, and one per cent inedible.

Q. Disregarding the inedible, how did the eggs in that case grade? A. It would be a Grade B.

Q. And the size, weight?

A. Let me correct myself here. These are not totalled up and I have to add them in my head, which is not too good. They would have barely made a Grade A rather than a Grade B.

Q. I beg your pardon?

A. That case would barely have made [2445] Grade A rather than Grade B, as I told you before.

Q. It was graded Grade A then?

A. Yes sir.

Q. And the size?

A. This one was forty pounds, six ounces, which would have made it a Medium.

Q. Medium weight? A. Yes sir.

Q. How about the next case, the fifth case?

A. It also had a Department of Agriculture inspection stamp, AA quality. It had 18 per cent AA, 64 per cent Grade A, 17 per cent Grade B and one inedible.

(Testimony of Milton R. Evans.)

Q. Disregarding the inedible, how would that grade?

A. It would have graded Grade A.

Q. And the size?

A. It was an even forty pounds, no odd ounces.

Q. So that would grade A Medium then?

A. Yes sir.

Q. Now, the sixth case?

A. It also had an inspection stamp, AA quality; 36 per cent AA's, 46 per cent A, 11 per cent B, 3 per cent C, one small blood spot, 3 per cent checks.

Q. No inedibles? A. No sir.

Q. How did that case grade?

A. It would barely make Grade A.

Q. And as to the weight?

A. Forty pounds, 2 ounces.

Q. That would grade Medium?

A. Yes sir.

Q. That case would grade A Medium, is that right? A. Yes sir.

Q. Now, the seventh case you say you did not grade but you weighed? A. Yes sir. [2446]

Q. Was that stamped or unstamped?

A. It didn't have an inspection stamp. It was light in weight, 33 pounds and 12 ounces.

Q. And that, so far as weight was concerned, was classified as what? A. Peewee.

Q. Taking into account all of the cases in the aggregate that you examined, how did you grade the whole shipment of sixty-five cases?

(Testimony of Milton R. Evans.)

A. It would be Grade B Small, slightly under the quality of Grade A.

Q. Do you know whether there was any cheese or butter on the ship that you examined?

A. I do not recall.

Mr. Pratt: May I have Exhibit 84, please? If the Court please, the testimony of the witness in regard to the steamship Phillipa involves eggs which were invoiced to the Government under Exhibit 84. At this time I would like to point this out in part to the Jury.

Mr. Faulkner: While you do that may the document the witness has be marked Defendants' Exhibit for identification?

(The document was thereupon marked Defendants' Exhibit BA for Identification.)

Mr. Pratt: This is another Nye & Nissen invoice dated May 3, 1944, addressed to the Government: "United States of America, War Shipping Administration, care of Matson Navigation Company, General Agent." It includes 65 cases of eggs, Medium AA, 1,950 dozen at 39 cents, $760.50. Also some items of [2447] cheese and butter for delivery to the steamship Phillipa, Pier 30.

Q. I want to direct your attention now, Major, to your examination of eggs on the steamship Czechoslovakia Victory. Do you recall that?

A. Yes sir.

Mr. Pratt: If the Court please, this relates to the sixth count of the indictment and to the specific allegations in that count.

(Testimony of Milton R. Evans.)

Q. When did you make an examination of the eggs on the Czechslovakia Victory?

A. On May 5, 1944.

Q. Who accompanied you?

A. Agent Johnson.

Q. Where was that boat?

A. It was at the Encinal Terminal in Alameda.

Q. How many cases or where did you find the eggs on that ship?

A. As I recall, these eggs were in the ship's cooler when we went aboard.

Q. How many cases of eggs did you find in the cooler? A. There were twenty-five cases.

Q. Is that all the eggs in the cooler?

A. As I recall, that is all that were present.

Q. I beg your pardon?

A. As I recall, that is all that were present.

Q. How many of these cases did you examine?

A. I candled out of three of them.

Q. How were the cases marked?

A. They had the green [2448] "Biddy" label on them, and apparently a rubber stamp with purple ink on them reading, "Medium Grade A."

Q. They were not stamped, any of them, by the Department of Agriculture inspectors?

A. They had no Department of Agricu. stamp.

Q. And you say you candled three cases, isn't that right? A. Yes sir.

Q. Do you recall where you did that work?

(Testimony of Milton R. Evans.)

A. As I recall, it was in a little hallway running between the two coolers on the vessel.

Q. Now, the first of these cases that you candled, what was the result of your candling?

Mr. Faulkner: Your Honor, in connection with the objections we have made I am directing your Honor's attention to the objection I think I neglected: We have made our position clear that we take the position that the eggs in all these instances are the best evidence, and this is secondary evidence.

The Court: The objection is overruled.

Mr. Faulkner: May I make the objection I made this morning and supplement it with that?

The Court: Let the record so show.

Mr. Faulkner: Exception.

Mr. Pratt: In regard to Counsel's objection, I think it should be noted that on one of these certificates that the [2449] Major presented there is quite apparently a place on the certificate where he spilled an egg; so I imagine that would be the best evidence so far as that egg is concerned.

Mr. Faulkner: It would be the best evidence that he spilled an egg, if that is part of your proof. That is very good evidence. That is a little more substantial than the remaining. That is the point I make. That is some indication that he was near the egg when he spilled it on the paper. The rest is merely writing on a piece of paper, while the eggs would be proof of these claims and which a person who would be involved in this dispute could

(Testimony of Milton R. Evans.)

examine and determine what the quality was at the time the claim was made that there was a deficiency. This is a one-sided examination.

The Court: Proceed.

Mr. Pratt: Q. You say that this examination on the Czechoslovakia Victory was on the fifth of May. Now, the result of your candling of the eggs was what?

A. I found 18 per cent Grade A, 47 per cent Grade B, 23 per cent Grade C, 3 U. S. Dirty, 3 per cent checks and 6 per cent inedibles.

Q. Referring to the 6 per cent of inedibles, that meant six eggs out of a hundred you candled in the case, is that right? A. That is right.

Q. What were the characteristics of those six inedibles, do you know?

A. Well, there were four mixed rots and two stuck [2450] yolks.

Q. Aside from the fact that there were six per cent of inedibles, disregarding that fact, how did the eggs grade in that case?

A. They would have graded a Grade C.

Q. Did you weigh the eggs in that case?

A. I did.

Q. With what result?

A. Well, for the half-case it was 21 pounds, 2 ounces, which after multiplying and subtracting for the tare weight would place it under 40 pounds.

Q. How much under 40 pounds?

A. It would be 38 pounds, 12 ounces, if my mental calculations are correct.

(Testimony of Milton R. Evans.)

Q. And that would classify these eggs how?

A. Small.

Mr. Faulkner: I submit that is not the best evidence, this witness's testimony.

The Court: Well, what is the best evidence?

Mr. Faulkner: Pardon me?

The Court: What is the best evidence?

Mr. Faulkner: The regulations on the paper he holds in his hand, for instance, on the back of it.

The Witness: I have not made the calculation here. I have entered the half-case weight as I determined it by weight and entered it in that column. The rest of it is mathematical.

Mr. Faulkner: It is right on the reverse side.

The Court: You may cross examine him and bring that out.

Mr. Faulkner: It calls for his opinion and conclusion [2451] on a matter that is established by rules and regulations.

The Court: I will allow it to stand.

Mr. Faulkner: Exception.

Mr. Pratt: Q. How about the second case that you candled on that occasion on the steamship Czechoslovakia Victory?

A. It bore the same label and marking. I found 23 per cent Grade A, 52 per cent Grade B, 23 per cent Grade C and 2 per cent inedible.

Q. What were the inedibles? What was the matter with them?

A. Stuck yolks.

Q. What is it?

A. Stuck yolks.

(Testimony of Milton R. Evans.)

Q. How did the eggs grade disregarding the inedibles?

A. They would be slightly under Grade B. They would be Grade C.

Q. And the weight of the eggs?

A. Identical with the last one.

Q. I beg your pardon?

A. It would be 38 pounds, 12 ounces.

Q. How did you examine the eggs in case No. 3? With what result?

A. I found 45 per cent Grade B, 45 per cent Grade C and 8 per cent as inedible.

The Court: We will now take the afternoon recess.

(Recess.)

The Court: You may proceed.

Mr. Pratt: Q. Major, you were just telling about this third case that you candled on the Czechoslovakia Victory. [2452] You stated that there were 45 B's, 45 C's, and how many inedibles?

A. There were 8 inedibles—10.

Q. Ten. How AA's were there in that case?

A. There were none.

Q. How many A's?

A. There were none.

Q. Now, taking the whole lot of eggs that you candled, these three cases from the Czechoslovakia Victory, what was the total percentage of each classification or grade?

A. There were 13.6 per cent Grade A, 48 per cent Grade B, 30.3 per cent Grade C, one per cent

(Testimony of Milton R. Evans.)

U. S. Dirty, one per cent checks and 6 per cent inedibles.

Q. And the total classification of the eggs in that lot of 25 cases according to your examination of these three cases was what?

A. Would be Grade C. It would be no grade so far as the percentage of inedibles go, but even without them it is less than a Grade B.

Mr. Faulkner: May that document the witness has used be marked next in order for identification?

The Court: Very well.

(The document was thereupon marked Defendants' Exhibit BB for Identification.)

Mr. Pratt: Q. Major, I direct your attention to Exhibit 51 for Identification, this green "Biddy" egg label, and ask you if you can identify it?

A. Yes, that is my initials on it. [2453]

Q. Was that taken from one of these cases of eggs on this ship? A. Yes sir.

Mr. Pratt: This Exhibit 51 for Identification is now offered in evidence.

The Court: It may be admitted and marked.

(U. S. Exhibit 51 for Identification was thereupon received in evidence.)

Mr. Pratt: If the Court please, as I have already said, the testimony of Major Evans in regard to the Czechoslovakia Victory relates to the sixth count of the indictment, and I would like to read to the Jury the portion of the invoice of Nye & Nissen to the Government in that connection.

(Testimony of Milton R. Evans.)

This invoice is dated May 3, 1944, addressed to the United States War Shipping Administration, 25 cases of eggs, Medium A, 750 dozen at 33½ cents, $251.25, for delivery to the steamship Czechoslovakia Victory.

Q. Now, in regard to the inedible eggs that you found in the cases on the Czechoslovakia Victory, you testified as to the third case, I think it was, that there were ten inedible eggs. Have you got your certificate there? A. No sir.

Q. What was the character of those inedibles?

A. There were four mixed rots and six stuck yolks.

Q. What do you mean by a stuck yolk?

A. That is when the membrane of the yolk has become adherent to the membrane of the shell.

Q. Do you know what causes that condition?

A. Generally it is the result of weakening of the yolk over a period of a considerable length of time, and the yolk migrates, you might say, settles in the lower part of the egg and becomes adherent through bacterial action to the membrane of the shell, so that when the egg is rotated the yolk will not move. It is attached to the shell.

Q. How long does it take for that condition to arise?

A. Usually a period of several weeks, at least, depending on the circumstances, the conditions in which the eggs are maintained.

Q. Were these eggs in these cases processed?

(Testimony of Milton R. Evans.)

A. I don't recall whether they were processed or not. To the best of my memory they were.

Q. I now direct your attention to your examination of eggs on the steamship William A. Coulter. Have you a record of that examination?

A. I have.

Q. When was that done?

A. That was on the 8th of May, 1944.

Q. Where was the steamship Coulter at that time? A. At Pier 44.

Q. Who accompanied you on that boat?

A. Agent Johnson and Colonel Hand.

Q. Anyone else? A. Not that I recall.

Q. How many cases of eggs did you observe on that occasion? [2455]

A. I candled four cases.

Q. How many cases were there?

A. There were forty cases.

Q. Where were they?

A. As I recall, they were in the cooler. I don't remember distinctly.

Q. And of the forty cases that you found and examined, how many of them bore the stamp of the Department of Agriculture inspection?

A. There were thirty-four with the inspection stamp.

Q. And what was the date of that inspection stamp? A. The 4th of May, 1944.

Q. And the remaining six cases, did they contain any Department of Agriculture stamp?

A. They did not.

(Testimony of Milton R. Evans.)

Q. How were these forty cases labelled, Major?

A. As I recall, they had the same type of label as you showed me previously.

Q. This green "Biddy" label Medium?

A. Yes sir.

Q. How many cases did you examine?

A. I candled four.

Q. And with what result as to the first of these cases?

A. I found 16 per cent Grade AA, 60 per cent Grade A, 21 per cent Grade B, 3 per cent Grade C.

Q. How did the case grade?

A. That would be a Grade B, slightly under Grade A.

Q. How about the weight? Did you weigh that case? A. Yes sir.

Q. And what was the net weight of the eggs in that case? A. 37 pounds, 12 ounces. [2456]

Q. That would grade Small A?

A. Yes sir.

Q. So far as weight is concerned?

A. Yes.

Q. Now, the next case?

A. There were 40 per cent Grade AA, 47 per cent Grade A, 7 per cent Grade B, 3 per cent Grade C, 3 per cent checks.

Q. And how did that case grade?

A. That would grade a Grade A.

Q. How about the weight of that case?

A. It was 38 pounds, 2 ounces.

Q. That classified as Small, did it?

(Testimony of Milton R. Evans.)

A. Yes sir.

Q. How about the next case, the third case?

A. 38 per cent Grade A, 44 per ent Grade B, 11 per cent Grade C, 3 per cent checks and 4 per cent loss.

Q. The 4 per cent loss was occasioned by what?

A. Well, there was one broken egg of which the contents were completely dried out, two mixed rots and one blood rot.

Q. Now, aside from the losses that you speak of, what did that case grade?

A. That would grade a Grade B.

Q. And what was the weight?

A. It was 39 pounds, 9 ounces.

Q. That was slightly under a Medium weight, is that right? A. Yes sir.

Q. How about the next case?

A. There were 14 per cent Grade AA, 37 per cent—rather, 57 per cent Grade A, 22 per cent Grade B, one per cent blood spot, 5 per cent checks, and one inedible. [2457]

Q. What was the inedible?

A. It was an egg that had broken and become decomposed.

Q. And what was the grade of that case of eggs?

A. Outsdie of the inedible egg it would have graded a Grade B.

Q. And as to the weight?

A. It would have been Medium, 40 pounds, 7 ounces.

Q. Taking the whole of these forty cases as in-

(Testimony of Milton R. Evans.)

dicated by your candling of four cases, how did you grade the whole lot of forty cases of eggs?

A. It would be no grade on the bases of the inedible eggs. Not considering them, it would have been a Consumer Grade B.

Q. Consumer Grade B? A. Yes sir.

Q. And what weight?

A. Small, an average of 38 pounds 8½ ounces.

Q. It is noted that you found six cases with the forty that bore no stamp? A. Yes sir.

Q. Now, were any of those cases among the four that you candled? A. There were not.

Q. You did not candle any of those that did not have the Department of Agriculture stamp on them, is that right? A. No sir, I did not.

Mr. Pratt: At this time, if the Court please, I would like to read to the Jury part of the invoice relating to this shipment of eggs on the steamship Coulter, about which Major Evans has just testified. [2458]

Mr. Faulkner: Mr. Pratt, may that document be marked Defendants' Exhibit for identification next in order?

(The document was thereupon marked Defendants' Exhibit BC for Identification.)

Mr. Pratt: This invoice of Nye & Nissen to the Government is dated May 8, 1944; "Butter, eggs and cheese to be delivered to the steamship William A. Coulter, Pier 44, inspected by W.F.A.; among other things 40 cases of eggs, Medium, Processed, AA; 1200 dozen at 41 cents, $492.00."

(Testimony of Milton R. Evans.)

Q. Major, I now direct your attention to an examination of eggs on the steamship Francis W. Parker. Do you recall that incident?

A. Yes sir. We inspected some eggs on that vessel.

Q. When did that occur?

A. On the 9th of May, 1941.

Q. Where was the Francis W. Parker?

A. Pier 41.

Q. Here in San Francisco?

A. Yes sir.

Q. With whom did you go on that boat on that errand? A. Agents Ellis and Johnson.

Q. Both FBI agents? A. Yes sir.

Q. Where were the eggs on that steamship?

A. As I recall, when we arrived the eggs were on the pier.

Q. Did you examine them there on the pier?

A. Yes sir. We weighed the eggs on the pier I didn't candle them there, however.

Q. You weighed them on the pier?

A. Yes sir. [2459]

Q. How many cases did you weigh?

A. Well, at that time we weighed several of them. I recall having weighed at least seven cases not bearing an inspection stamp. I believe Agent Johnson recorded the weights on those and several others.

Q. Then the eggs were moved onto the boat, were they? A. Yes sir.

(Testimony of Milton R. Evans.)

Q. Where were they there when you examined them?

A. I don't know exactly where they were placed, but I selected some samples and had them taken into the steward's cabin.

Q. How many cases of eggs were in that lot of eggs?

A. There were 45 cases of eggs on the pier.

Q. How were they stamped?

A. Thirty-eight of them had Department of Agriculture inspection stamp for AA quality, dated 4 May, and seven cases bore no inspection stamp of any kind.

Q. Did they all bear the green label?

A. Yes sir.

Q. Indicating Medium size? A. Yes sir.

Q. How many cases did you candle?

A. I candled four cases.

Q. Where did you do that work?

A. I candled them in the steward's room.

Q. Were there any markings on any of these cases other than the labels that you have spoken of and the stamps of the Department of Agriculture on thirty-eight of them?

A. None that I recall.

Q. Referring to the first of these cases that you examined by [2460] candling, what was the result?

A. I found——

Q. Was this a stamped case?

A. Yes sir; it bore an inspection stamp. I found

(Testimony of Milton R. Evans.)

40 percent Grade AA, 41 percent Grade A, 8 percent Grade B, and one percent Checks.

Q. And what was the grade of the eggs then?

A. It would grade a Grade A.

Q. Did you weigh that case? A. Yes sir.

Q. What was the net weight of the eggs in that case?

A. I will have to mentally calculate here again. 38 pounds, 10 ounces would be the net weight of the whole case.

Q. And that graded them a Small or was classified as Small, is that right? A Yes sir.

Q. Did you weigh any individual eggs?

A. Yes sir. I weighed each of the individual eggs that I candled on individual egg scales.

Q. And the result was what?

A. In this case there were eight eggs out of the hundred I candled that failed to break the scale for a Medium egg, 20 ounces.

Q. Now, the next case of eggs, the second one, was that a stamped or unstamped case?

A. It bore the inspection stamp of the Department of Agriculture.

Q. What did you find as to the grade?

A. I found ten percent Grade AA, 37 percent A, 45 percent grade B, 5 percent Grade C, 2 percent checks and one Inedible as a mixed rot.

Q. What was the matter with the Inedible egg?

A. It was a mixed rot.

Q. How did the case grade?

(Testimony of Milton R. Evans.)

A. It would grade a Grade B excepting for the Inedible egg.

Q. And how about the weight of that case?

A. It would be 39 pounds, 8 ounces.

Q. That was slightly below the minimum for Medium weight, is that right. A. Yes.

Q. Did you weigh any individual eggs in that case?

A. Yes sir, I weighed all of them. There were 12 eggs that failed to break the 20-ounce scale for Medium eggs.

Q. Now, the third of these cases?

A. It bore an inspection stamp, Department of Agriculture, for AA quality. It had 37 percent Grade AA, 45 percent Grade A, 14 percent Grade B, one percent Checks, one percent Leakers, and 2 Inedible eggs.

Q. And the Inedibles were what?

A. One was a blood rot, one was a mixed rot.

Q. And the case graded what aside from the inedibles?

A. It graded Grade A.

Q. And the weight of that case?

A. Would have been 39 pounds, 10 ounces.

Q. That was slightly below the minimum for Medium eggs, is that right. A. Yes sir.

Q. Now, the fourth case, was that a stamped or an unstamped case?

A. It did bear the inspection stamp of the Department of Agriculture. [2462]

Q. And what was the result of the candling?

(Testimony of Milton R. Evans.)

A. 22 percent Grade A, 45—I beg your pardon. Those were AA's, 65 percent Grade A, 9 percent Grade B, 3 percent Grade C, one percent Checks.

Q. And the total grade of that case?

A. It would make a Grade A.

Q. And the weight?

A. It would be 39 pounds, 8 ounces.

Q. That was again slightly below the minimum for Medium Grade A, Medium weight eggs, is that right? A Yes sir.

Q. Now then, you have said that there were seven cases of eggs that were unstamped. Did you examine the eggs in those seven cases?

A. Yes. I weighed half-cases out of each of these seven cases.

Q. You weighed them? A. Yes sir.

Q. With what result?

A. I did not record the weight. Agent Johnson was keeping books and he recorded those weights as I called them from the scales to him.

Q. And you do not know what the weight was?

A. I do know that they were under weight eggs. I do not have the exact figures.

Q. Were there any other markings on any of those seven unstamped cases?

A. I do not recall any of the markings.

Q. Now, your conclusion as to the whole lot of eggs, or your conclusion as to the four cases that you candled was what?

A. They would be Grade B, Small, slightly under the Grade A.

(Testimony of Milton R. Evans.)

Mr. Pratt: If the Court please, the witness' testimony in [2464] regard to the eggs on the steamship Francis W. Parker related to the allegations in the fourth count of the indictment, and at this time I would like to read from the invoice, Exhibit 102.

Mr. Faulkner: While Mr. Pratt is doing that, may the memorandum be marked as Defendants' Exhibit for Identification?

(The document was marked Defendants' BD for Identification.)

Mr. Pratt: Exhibit 102 is another of these invoices from Nye & Nissen to the Government for eggs, butter and cheese for delivery on the steamship Francis W. Parker: 45 cases of eggs, Medium Processed AA, 1,350 dozen at 41 cents, $553.50.

Q. I now direct your attention, Major, to your examination of eggs on the steamship Mission San Diego. Do you recall that incident?

A. Yes sir.

Q. When was that?

A. It was on the 11th of May of 1944.

Q. Where was this ship?

A. It was the American Shipping Company, Alice Street in Oakland.

Q. On May 11 when you visited that ship, who accompanied you?

A. Agents Magee and Johnson.

Q. Where did you find the eggs?

A. This was a Navy tanker, and the cooler was

(Testimony of Milton R. Evans.)

in the stern of the ship, and we found them in the cooler.

Q. Upon your examination of these eggs, how many cases did you find?

A. There were ten cases of eggs in the cooler.

Q. What label was on these eggs?

A. They bore the Nye & Nissen "Biddy" brand label, Mediums. They had a further stamp [2464] on them, rubber stamp, Grade A.

Q. That was a rubber stamp on the label?

A. Yes sir.

Q. Did they bear any Department of Agriculture inspection stamp? A. They did not.

Q. And these ten cases did you examine to see whether the eggs were processed?

A. Yes, we did. I opened all the ten cases and found that none of the ten cases contained processed eggs.

Q. How many of these ten cases did you candle?

A. Two. [2464-a]

Q. On the first of these what did you find?

A. I found 60 percent Grade A, 18 percent Grade B, 1 percent Grade C, 11 percent U. S. Light Dirties, 3 percent U. S. Dirties, 1 Check.

Q. How many Grade B?

A. 24 percent Grade B.

Q. How did this case grade?

A. They would be a Grade B.

Q. What was the weight of the eggs in that case?

A. It would be 38 pounds 14 ounces.

(Testimony of Milton R. Evans.)

Q. Then they were classified as Small, is that right? A. Yes.

Q. The next case.

A. It also bore the Medium Grade A stamp. I found 68 percent Grade A and 27 percent Grade B, 4 percent Grade C, 3 percent Light Dirties and 2 percent U. S. Dirties, and 1 inedible egg.

Q. There were no AA eggs in that case?

A. No.

Q Or in the other case? A. No.

Q. Now, the third of these cases—you only examined two? A. Yes.

Q. The result of candling those two cases gave you what in percentages?

A. Give 64 percent Grade A, 23 percent Grade B, 2½ percent Grade C, 7 percent Light Dirties, 2½ percent Dirties, .5 checks, .5 loss.

Q. That is the grade result of the whole lot of 10 cases, is that right?

A. Based on the samples, yes.

Q. Based on the samples.

Mr. Pratt: If the Court please, the testimony of the [2465] witness in regard to the eggs on the Mission San Diego relates to the allegations in the third count of the indictment. At this time I would like to read portions of Exhibit 153, which is the invoice in connection with eggs——

Mr. Faulkner: While Mr. Pratt does that, may I have the document the witness used marked for identification?

Mr. Pratt: Q. What did that lot grade, Major?

(Testimony of Milton R. Evans.)

A. The grade, excepting for the inedibles, is Grade B, Small.

(The document was marked Defendants' Exhibit BE for Identification.)

Mr. Pratt: Q. This is another of these invoices from Nye & Nissen to the Government for delivery on the Mission San Diego, and includes 10 cases of eggs, medium, processed, AA, 300 dozen, 41 cents, $123.40.

Q. I now direct your attention to an examination of eggs on the steamship Cape Breton. Do you recall that transaction? A. Yes.

Q. When was that?

A. That was on the 11th of May, 1944.

Q. Where was that ship?

A. It was at Pier 15 in San Francisco.

Q. Whom did you go with?

Mr. Faulkner: We object to any testimony on the Cape Breton. There is no evidence in this record relating to the delivery of eggs to the Cape Breton out of the plant of Nye & Nissen. There is evidence of an invoice, but the Cape Breton is not one of the ships that Mr. Nystrom testified that he made any delivery of eggs to. [2466]

Mr. Pratt: The witness Ranson testified to a delivery of eggs at another pier. The evidence in the future will show that they went from that pier to the Cape Breton, at the pier mentioned by this witness.

Mr. Faulkner: Would you connect it up?

Mr. Pratt: Yes.

(Testimony of Milton R. Evans.)

Mr Faulkner: I will withdraw the objection on that ground.

Mr. Pratt: Q. Where was this boat when you made the examination? A. Pier 15.

Q. That was on May 11th, and you went with Mr. Johnson, is that right? A. Yes.

Q. How many cases of eggs did you find there on that boat? A There were 45 cases.

Q. Where were they?

A. As I recall, they were in the cooler of the vessel.

Q. Did you examine the whole 45 cases as to the stamps and labels on them? A. Yes.

Q. What did you find in that connection?

A. I found that 36 of the cases bore the Department of Agriculture stamp for AA quality dated May 4th. There were nine cases which did not bear an inspection stamp that had a capital letter "P" stamped on it with purple ink.

Q Was each of these nine cases unstamped?

A. Yes; on both ends of the case. [2467]

Q. Was there any "P" mark on the 36 cases?

A. No, sir.

Q. What kind of a label was on all of these 45 cases?

A. This Nye & Nissen green label "Biddy" brand Medium eggs.

Q. How many of these 45 cases did you candle?

A. I candled 4 of them.

Q. You had a hundred eggs from each one of those four cases? A. Yes.

(Testimony of Milton R. Evans.)

Q. As to the first of these cases that you examined by candling, what did you determine?

A. I found indications that around air cell of these eggs what we inspectors designate "horse collar" or storage collar. It is a darkening line at the junction of the air cell and the white, usually indicating a storage egg.

Q. Is that true of all the eggs in this first case?

A. I don't distinctly recall, but I made a record of noting it in this particular case, in this particular sample case.

Q. You examined 100 eggs? A. Yes.

Q. And those 100 were in the condition that you described? A. That's right.

Q. You did not examine the other eggs in the case?

A. The balance in that particular case?

Q. Yes. A. No; I did not.

Q. What else did you determine by candling?

A. I found it contained twelve percent Grade AA, 44 percent Grade A, 18 percent B, 2 percent C, 1 small blood spot, 1 Check, 2 inedible [2468] eggs, one was a moldy egg, and one was a white rot. It would further indicate the finding of storage marks on the air cell.

Q. The one egg that was moldy, was that mold on the exterior or the interior of the egg?

A. The interior of the shell.

Q. The inferior. What does mold on the interior of an egg indicate?

A. Well, it is a condition that does develop in

(Testimony of Milton R. Evans.)

storage and takes some time to develop. In other words, not common in a fresh egg.

Q. From your examination of the eggs in that case, then, did you determine that they were storage eggs?

A. In my opinion, they were storage eggs.

Q. Could you tell from your examination how long they probably had been in storage?

A. I would say at least two months or longer, probably longer.

Mr Pratt: My associate says you only gave a record as to 80 eggs in that case.

A. I think I gave it completely. Maybe you can check:

The Reporter: I believe it is 100.

(The reporter read as follows:

"12 percent Grade AA, 44 percent Grade A, 18 percent B, 2 percent C, 1 small blood spot, 1 Check, 2 inedible eggs, one was a moldy egg, one was a white rot.")

Mr. Pratt: Q. Referring to the second of these cases on the steamship San Diego—I mean the Cape Breton, will [2469] you state what you found in connection with this second case?

A. I found 72 percent Grade AA, 18 percent Grade A, 3 percent Grade B; 2 percent Grade C, 1 small meat spot, rather, one small blood spot, 2 percent checks, 2 percent inedibles; that is blood rot.

Q. Blood rot? A Yes.

Q. How about the general condition of the eggs

(Testimony of Milton R. Evans.)

in that case compared with the eggs in the first of the two cases?

A. There is a distinct contrast as——

Mr. Faulkner: We object to a comparison of eggs that are not present in court. He testified to what he found on one case——

Mr. Pratt: He is testifying as an expert. I think we are entitled to know what the difference is between those in the first case and those in the second case.

Mr. Faulkner: We have those two figures that there were 72 percent Grade A——

Mr. Pratt: I am not talking about that. I am talking about the eggs which he described as the first case in connection with which he concludes they were eggs that had been in storage for months.

The Court: Read the question.

(Question read.)

The Court: He may answer. Overruled.

Mr. Faulkner: Exception. [2470]

The Witness: A. The second case indicated a good quality of egg, another indication of freshness.

Mr Pratt: Q. They were not storage eggs, in your opinion, is that right?

A. Not in my opinion.

Q. As to the third of these cases of eggs on the Cape Breton.

A. It bore an inspection stamp, same date as the others.

Q. Did the second case bear an inspection stamp?

A. It did not. It had the purple stamp "P" on both ends of the case.

(Testimony of Milton R. Evans.)

Q. Now, the third case you say bore an inspection stamp dated when? A. May 4, 1944.

Q. What was the result of your examination of 100 eggs in that third case?

A. I found 56 percent Grade AA, 30 percent Grade A, 11 percent Grade B, 1 small blood spot, 2 percent Checks.

Q. How did those grade?

A. That would grade a Grade A.

Q. And the weight?

A. 39 pounds 14 ounces.

Q. That would be slightly under the minimum for medium eggs? A. Yes.

Q. I neglected to ask you about the weight of the eggs in the second of the cases you candled on that occasion.

A. The one with the "P" marked on it.

Q. The second case, what was the weight?

A. 35 pounds, 8 ounces.

Q. You have said the eggs in that case would be classified as Peewee eggs?

A. That is what they are generally called, yes.

Q. They were under the minimum label for small eggs? A. Yes.

Q. How about the fourth case you examined on the Cape Breton?

A. I found it to bear a Department of Agriculture label, AA quality of the same weight, with 43 percent Grade AA, 39 percent Grade A, 14 percent Grade B, 1 small meat spot, 2 percent checks, 1 inedible, that is a blood rot.

(Testimony of Milton R. Evans.)

Q. Aside from the inedible egg, what grade was it? A. Grade A.

Q. The weight of this last case was what?

A. 39 pounds 12 ounces.

Q. That was just slightly below the minimum for Medium eggs, is that right? A. Yes.

Q. Taking the whole four cases that you sampled and thereby grading the whole lot of 45 cases, what was the result?

A. With the exception of 1.2 percent inedibles they would have graded a Consumer Grade A.

Q What classification, as far as weight is concerned?

A. Small, an average of 37 pounds 3 ounces. 38 pounds.

Mr. Faulkner: What was the last?

A. It should be 38 pounds 3 ounces.

Mr. Pratt: Q. I direct your attention to a label which is marked Exhibit 43 for Identification, and I will ask you if you can find any identifying marks on this label.

A. No, I don't see my initials on that.

Q. State whether that label is the same as the labels which were [2472] found on the unstamped cases on the Cape Breton that you have mentioned?

A. It looks very much like the same as the eggs we saw of that with the letter "P" on them.

Q. At the left-hand corner? A. Yes.

Mr. Faulkner: Which one are you referring to, which one are you showing the witness?

Mr. Pratt: That is 43. I would like Exhibit 81

(Testimony of Milton R. Evans.)

please. If the Court please, the testimony of the witness in regard to the eggs on the Cape Breton relates to the overt act D described in the first count of the indictment. I would like at this time to read to the Jury a portion of the invoice relating to this shipment of eggs. Exhibit 81.

Mr. Faulkner: While Mr. Pratt does that, may the document the witness used be marked for identification?

(The document was marked Defendants' Exhibit BF for Identification.)

Mr. Pratt: This is another Nye & Nissen invoice directed to the Government, care of Matson Navigation Company, General Agents, for delivery to the Cape Breton, Pier 30, including 45 cases Medium AA, Processed eggs, 1,350 dozen at 39 cents, $526.50. This is dated May 10, 1944.

Q. Major Evans, I now call your attention to the examination of eggs on the steamship James Oliver. Do you recall that? A. Yes.

Q. When did you examine eggs on that ship?

A. On the 23rd of [2473] May, 1944.

Q. Who was with you on that occasion?

A. Agent Magee.

Mr. Faulkner: This is an examination you will connect up, Mr. Pratt. Will your Honor remain a moment after the jury goes? We are going to have some of these exhibits photostated and the man is here. I would like your Honor's approval.

The Court: Yes. It is now time to adjourn. I

will excuse the jury until ten o'clock tomorrow morning. You may be excused.

Mr. Faulkner: It is agreeable to Mr. Pratt to mark this for identification.

(The document was marked U. S Exhibit BG for Identification.)

(Thereupon an adjournment was taken until tomorrow, Friday, March 8, 1946, at 10:00 o'clock a. m.)

Friday, March 8, 1946, 10:00 o'clock a.m.

The Clerk: United States vs. Nye & Nissen.

The Court: Call the roll.

(The roll of the jurors was called, all being present.)

The Court: Proceed:

MILTON R. EVANS,

recalled;

Direct Examination (resumed)

Mr. Pratt: If the Court please, in connection with Major Evans' testimony thus far, we find on examining the transcript that the Major made some slight errors which we now, or which he, rather, now wants to correct.

Mr. Faulkner: Well, he has not the privilege of correcting his testimony, your Honor. We object to a statement like that. His testimony introduced stands as given. If it is the desire of the

(Testimony of Milton R. Evans.)

witness to correct it, it doesn't arise at this time.

The Court: There is nothing before the court, gentlemen. You may proceed.

Mr. Pratt: Q. Major, in connection with your testimony regarding an examination of eggs on the steamship Parker, will you refer to your record that you made at the time? You testified yesterday that the examination that you made of these eggs was May 9, 1941.

A. That should have been May 9, [2475] 1944, according to my record here.

Q. You misspoke in that respect?

A. Yes, sir.

Q. In that same connection I will ask you whether you stated, I think you did not state the number of AA eggs which you found in the first of the cases which you examined. How many AA eggs did you find?

A. 40.

A. You found 40 AA eggs?

A. Yes.

Q. What was the total grade——

A. I best correct that. It reads 50.

Mr. Faulkner: I did not hear the answer.

(The record was read.)

Mr. Pratt: He found 50 AA eggs. He formerly testified that he found 40. He is correcting his testimony in that regard from his record.

The Witness: These columns are not totaled, and I am attempting to do it mentally and my ability to add seems to be rather poor.

Mr. Pratt: Q. In that lot of eggs examined on

(Testimony of Milton R. Evans.)

the Parker, what was the total grade, or the grade of the total number of eggs?

A. Excepting for the inedible eggs present, it would have been U. S. Grade B, just slightly under Grade A, Small.

Q. That refers to the total lot of eggs as evidenced by your examination of that number of eggs? A. Yes.

Q. Now, in the Parker, what was the total number of each classification of eggs in your examination of the several cases? [2476]

A. In percentage?

Q. The number and the percentage.

A. Total of 119 AA, 29.7 percent; 188 Grade A, 47 per cent; 76 Grade B, 19 percent; 8 Grade C, 2 percent; 5 Checks, 1.2 percent; 1 Leaker, .2 percent; 3 Inedible eggs, .75 percent.

Q. Aside from the inedible eggs, you gave a grade for the whole lot of eggs of what?

A. Grade B, Small.

Q. Going back to the Cape Charles, will you state the date of the Department of Agriculture stamp that appeared on such cases as bore that stamp?

Mr. Faulkner: We submit this has been asked and answered, your Honor. He answered it from the record right on his lap.

Mr. Pratt: I think he did not state the dates.

The Court: If there is any question about it, he may answer. Do you recall the question?

The Witness: That was the Cape Charles?

(Testimony of Milton R. Evans.)

Mr. Pratt: The Cape Charles.

The Witness: The date of the Department of Agriculture Inspection stamp was 27 day of April, 1944.

Q. That applied to all the cases that were stamped? A. Yes.

Mr. Faulkner: May I have the date?

Mr. Pratt: April 27, 1944.

Q. Will you give the total number of eggs and the average to each grade?

A. 172 Grade AA, 43 percent; 125 Grade A, 31.2 percent; 73 Grade B, 18.2 percent; 17 Grade C, 4.2 per- [2477] cent; 3 small Bloodspots, .75 percent; 6 Checks, 1.5 percent; 4 Inedible eggs, 1 percent.

Q. Aside from the inedible eggs, what was the grade of the lot? A. Grade B, Small.

Q. And the average weight of the eggs, the cases? A. 36 pounds 1 ounce.

Q. Now, as to the Gilbert Hitchcock, as to that ship, as to the lot of eggs or the cases that you examined, will you give the total of each grade and the average of that grade?

A. 207 AA, 34.5 percent; 233 Grade A, 38.8 percent; 128 Grade B, 21.3 percent; 16 Grade C, 2.6 percent; 1 small Meat Spot, .1 percent. 6 Checks, 1.1 percent; 9 Inedibles, 1.5 percent.

Q. Disregarding the inedibles, what grade did you give the lot of eggs?

A. It would be Small Grade B.

Q. The average weight?

A. 36 pounds 11 ounces.

(Testimony of Milton R. Evans.)

Q. Referring to the Phillipa, what was the date on the U. S. Department of Agriculture stamp in each instance where such a stamp appeared?

A. The 27th of April, 1944.

Q. Again, will you give the total of the eggs that you examined in the several cases with the average of each grade?

A. 138 U. S. grade AA, 23 percent; 295 Grade A, 49.1 percent; 124 Grade B, 20.3 percent; 31 Grade C, 5.2 percent; 1 Small Blood Spot, .2 percent; 7 Checks, 1.2 percent.

The Court: What do you mean by 7 Checks? What do you mean by Checks? You used that expression before.

A. That is [2478] an egg in which the shell is cracked.

The Court: Proceed.

The Witness: A. (continuing): 4 Inedible eggs, .6 percent. The average net weight was 37 pounds 11 ounces.

Mr. Pratt: Q. 37 pounds 11 ounces. What was the grade of the lot disregarding the Inedibles?

A. It would be Grade A, Small. Let me correct that. That would be Grade B, Small.

Q. Grade B, Small.

A. Yes, slightly under Grade A.

Q. The second of the cases you examined on the Phillipa, in your testimony yesterday you did not give the result in grade of that particular case.

A. There were 9 percent U. S. Grade AA; 49

(Testimony of Milton R. Evans.)

percent Grade A; 25 Grade B; 26 Grade C; 1 Inedible, Mixed Rot.

Q. And disregarding the Inedible, what was the grade of the eggs in that case?

A. It would be a Grade B.

Q. And the weight?

A. 40 pounds 12 ounces.

Q. That graded Mediums, then, didn't it?

A. Yes.

Q. B mediums. A. Correct.

Q. Referring to your testimony of the eggs on the Czechoslovakia Victory, will you give the total of each grade and the percentage in the whole lot?

A. There were 41 U. S. Grade A, 13.6 percent; 144 Grade B, 48 percent; 91 Grade C, 30.3 percent; 3 U. S. Light Dirties, 1 percent; that should be U. S. Dirties instead of Light Dirty, 1 percent; 3 Checks, 1 percent; 18 Inedible eggs, 6 percent. The net weight, 38 pound 14 [2479] ounces average.

Q. Disregarding the Inedibles, what grade did you give to the lot of eggs on the Czechoslovakia Victory?

A. Not considering the U. S. Dirties in there, as well as the inedibles, there would be a Grade C.

Q. Grade C? A. Small.

Q. Grade C, Small. I asked you yesterday in connection with the Inedibles in one of those cases, and you mentioned that there were several that had stuck yolks, and I asked you to define a stuck yolk. Do you recall what your answer was to that question?

(Testimony of Milton R. Evans.)

A. It is called to my attention that in referring to a weakened white, I referred to it as a weakened yolk, which is incorrect. The settling of the yolk is the result of the yolk rather than the weakening of the white.

Q. You have made that a correction?

A. Yes.

Q. Referring to the examination of eggs on the William A. Coulter, will you give the total of the average of the eggs you examined?

A. There were 70 Grade AA eggs, 17.5 percent; 202 Grade A, 54.5 percent; 94 Grade B, 23.1 percent; 17 Grade C, 4.2 percent; 1 Small Blood Spot, .2 per cent; 11 Checks, 2.7 percent; 5 Inedible losses, 1.2 percent. The average net weight, 38 pounds 9½ ounces.

Q. Disregarding the inedibles, how would you then grade the lot of eggs?

A. It would be Consumers Grade B Small.

Q. In connection with the Cape Breton, attention was called [2480] during the course of the testimony that in giving the grading of eggs in the first case there you added up 80 instead of 100, and we recall that the reporter, in referring to his notes, stated there were 100. If the Court please, the reporter being a conscientious individual, came to me this morning and said he had made a mistake, that there were only 80. Major Evans, will you again state——

Mr. Faulkner: Just a moment. What is that

(Testimony of Milton R. Evans.)

about the reporter being a conscientious individual? May I have that read, your Honor?

(The record was read by the reporter.)

The Court: Well, if you recall, the reporter—someone asked the reporter to read it, and he made that statement, that there were 100. Am I correct in that?

Mr. Faulkner: I think we all understand, your Honor.

The Court: Proceed.

Mr. Pratt: Q. Will you go over again your grading of the eggs in the first of the cases on the Cape Breton?

A. There should have been 12 Grade AA, 64 Grade A, 18 Grade B, 2 Grade C, 1 Small Blood Spot, 1 Check, and 2 Inedible eggs.

Mr. Pratt: That adds up to 100, does it?

A. I cannot follow the columns. You might ask the reporter.

Mr. Pratt: Q. You graded that case aside from the Inedibles as what?

A. It would be Grade A. [2481]

Q. The total of the cases you examined gave how many of each grade, and the percentage of each?

A. 183 AA, 45.7 percent; 151 Grade A, 37.7 percent; 46 Grade B, 11.5 percent; 4 Grade C, 1 percent; 4 Small Meat Spots, 1 percent; 7 Checks, 1.7 percent; 5 Inedibles losses, 1.2 percent; 38 pounds 3 ounces net weight.

Q. Disregarding the inedible eggs, what did the lot grade?

(Testimony of Milton R. Evans.)

A. It would have graded Grade A, except for the inedible losses.

Q. Now, Major, I will ask you to state whether or not you examined certain eggs on the steamship James Oliver. A. I did.

Q. On what date?

A. I don't have an independent recollection of the date.

Q. I am handing you what I believe is your record of your examination of the eggs on that ship.

A. Yes.

Q. When were you on that boat?

A. On the 23rd of May, 1944.

Q. Where was it?

A. It was at the Moore Dry Dock in Oakland.

Q. Was it out of the water in the Dry dock?

A. Yes, sir.

Q. Who was with you?

A. Agent Magee.

Q. How many cases of eggs did you see there, and where did you see them?

A. I found eight cases; as I recall, they were in the anteroom, right directly opposite the cooler. They were either in the cooler or in the anteroom. I don't recall whether we brought them out of the cooler or whether they were sitting in the anteroom.

Q. These eight cases of eggs had what labels?

A. There were [2482] only one or two of the Nye & Nissen labels on as such, the balance had a label stamp with the words "Nye & Nissen, Inc." and then the words "Medium Grade A."

(Testimony of Milton R. Evans.)

Q. Of the eight cases, how many of them had the green "Biddy" egg label, paper label?

A. There were one or two of them with the label. The balance either had old labels of another kind or no label. They all contained the stamp.

Q. I will ask whether you removed one of the labels from one of the two cases which were labeled.

A. As I recall, we did.

Q. I hand you this Exhibit 44 for Identification; I will ask you if you can identify that as one of the labels that was affixed to one of these cases.

A. Yes; my initials are on there. They were placed there at the time we took the label.

Q. You removed the label on that today, did you? A. Yes.

Mr. Pratt: The label is offered in evidence, if the Court please, Exhibit 44 for Identification.

Mr. Faulkner: We object to it as incompetent, irrelevant, and immaterial, and not within the issues of this case; no foundation laid as to individual defendants.

The Court: Objection overruled. It will be admitted and marked.

Mr. Faulkner: Exception.

(U. S. Exhibit 44 for Identification was thereupon received and marked in evidence.)

Mr. Pratt: Q. Of these eight cases, how many did you [2483] candle?

A. I candled three of them.

Q. Calling your attention to the first of these cases, what was the result of your examination?

(Testimony of Milton R. Evans.)

A. It would not bear a Department of Agriculture stamp. I found it to contain 70 percent Grade A, 20 percent Grade B, 3 percent Grade C, 3 percent U. S. Light Dirties, and 4 Checks.

Q. What did you grade that case?

A. It would have been a Grade B, slightly under Grade A.

Q. The weight of the case.

A. Would have been 42 pounds.

Q. As to the weight, it would be classified as Medium?

A. That statement of it being 42 pounds is incorrect. That does not exclude the tare for that case.

Q. What was the net weight of the case, the eggs in that case?

A. It would be 38½ pounds.

Q. Then it would grade what?

A. Probably a Small.

Q. As to the next case that you examined.

A. This case, I saw a pencil mark on the top of the case, "D-Med."

Q. That was a stencil on top of the case?

A. No, it was pencil, marked with a pencil.

Q. What other marking was there on that case?

A. None other than the stamp on the end of the case with the firm name and the grade.

Q. You say it was marked "D-Med"?

A. Well, "D-Med", which I presume would be "medium."

(Testimony of Milton R. Evans.)

Q. Do you know what the "D" indicates in marking eggs? [2484]

A. I interpreted it to mean "Dirties."

Mr. Faulkner: That calls for his opinion and conclusion. The witness has not testified he knows how an egg plant marks eggs, your Honor.

The Court: You can examine him.

Mr. Faulkner: I ask that the answer go out. There is no foundation for him to express an opinion on the subject of what the letter "D" means.

The Court: It may go out. Let the jury disregard it. Develop the facts, whatever they may be.

Mr. Pratt: Q. What was the result of your candling of this second case?

A. I found one Grade A egg, I found 42 percent U. S. Light Dirty eggs, 56 percent U. S. Dirty eggs, 1 Check.

Q. As to grade, how would you classify that case?

A. It wouldn't have a Consumer grade, there is no Consumer grade containing dirty eggs. They would have the wholesale classification of U. S. Dirties.

Q. What was the weight of that case, the net weight of the eggs?

A. It would be 38 pounds 6 ounces, if my figures——

Q. Would you like a pencil and paper, Major?

A. Yes, I would, please. The figure that I gave would be correct.

(Testimony of Milton R. Evans.)

Q. What was that?

A. 38 pounds 6 ounces.

Q. That classified as what?

A. Small. [2485]

Q. The third case that you examined?

A. I found it contained 56 percent Grade A, 32 percent Grade B, 6 percent Grade C, 2 Small Blood Spots, 2 Checks, 2 Inedible losses, stuck yolks.

Q. Disregarding the inedibles, how did that grade? A. 38 pounds 4 ounces.

Q. How did it grade?

A. Small. Oh, the grade, excuse me. It would have graded a Grade B.

Q. You say the weight was small.

A. Yes.

Q. You examined just three cases of eggs in that lot of eight cases? A. Correct.

Q. Were these eggs processed, any of them?

A. No, sir, not in my opinion.

Q. Did you examine any other than the three cases to determine that fact?

A. I don't recall distinctly; I made no note of checking any other than these three.

Q. The eggs in these three cases, none of them were processed? A. No.

Q. Will you give the result of the candling of the eggs in the three cases, the number of each grade and the percentage of each grade?

A. Besides the inedibles there are 18 percent of Dirty eggs, which makes it difficult to give any

(Testimony of Milton R. Evans.)

classification to this lot, because the dirty eggs are not graded according to interior quality.

Q. What was the number of each of the grades you found in the three cases?

A. I found 127 Grade A eggs, 42.3 percent; [2486] 52 Grade B, 17.3 percent; 9 Grade C, 3.2 percent; 2 Small Blood Spots, .6 percent; 45 Light Dirties, 15 percent; 56 Dirties, 18.6 percent; 7 Checks, 2.3 percent; 2 Inedibles, .6 percent. The average net weight 38 pounds 9 ounces.

Q. I believe you said you were unable to give a grade to this lot of eggs on account of the Dirties?

A. That is no Consumer grade, I could not ascribe to this. [2486-a]

Q. Were there any AA eggs in those three cases?

A. None that I graded.

Q. The whole lot of eight cases you then graded as what? A. As no grade.

Q. And what weight?

A. They would be Small.

Mr. Pratt: At this time I would like to read to the Jury Exhibit 147 covering the invoice on these eight cases of eggs.

Mr. Faulkner: Mr. Pratt, I think last night in the absence of the Jury we marked the James Oliver's tag with an exhibit number.

Mr. Pratt: I am going to offer them all as Government exhibits.

This invoice is dated May 23, 1944; Nye & Nissen, Inc., to the United States, Alaska Transportation

(Testimony of Milton R. Evans.)

Company, General Agents, for delivery to the steamship James Oliver at Moore's Drydock No. 4. 8 cases eggs, Medium, AA, Processed, 240 dozen at 41 cents, $98.40. With the notation also typed "Inspected by W. F. A.".

At this time, if the Court, please, I should like to offer in evidence the various memoranda which the witness has identified, and all of which have been marked at the request of Mr. Faulkner Defendants' Exhibits for Identification. I now offer them all as Government exhibits with one number, that is to say, collectively Exhibit whatever it is. [2487]

Mr. Faulkner: May I ask the witness a question, your Honor?

The Court: You may.

Mr. Faulkner: Q. In respect to all those documents which you used to refresh your recollection, they were all prepared by you, were they not, in substantial part?

A. In their entirety they were prepared by me.

Q. And they were prepared by you under circumstances where you had been called in by the Department of Justice to make an investigation of eggs in relation to an investigation which they were conducting, isn't that correct?

A. Well, I was called to grade the eggs, which would be indicated to me by them.

Q. You were not inspecting these eggs for the purpose of passing on their grade in connection

(Testimony of Milton R. Evans.)

with the sale to any of these shipping companies, were you, or do you know?

A. I do not believe that interpretation could be applied, no.

Q. What?

A. I don't believe it could be considered in that respect, no sir.

Q. And when you concluded that, the record which you made, what happened to it?

A. It has been in my custody for the past almost two years.

Q. In other words, you were requested to retain custody of those records?

A. That is correct.

Q. Is it not your practice to retain in your custody all egg [2488] grading sheets that you make for the United States Army Veterinary Corps, is it?

A. Not unless it happened to be something of a confidential nature. In that respect an officer always retains custody of such records.

Q. But the ordinary document similar to the one you have which indicated the percentage of certain type eggs would be filed in the Veterinary Corps, would it not?

A. Ordinarily it would be typed up by a clerk and have a neater appearance.

Mr. Faulkner: Your Honor, this is not an official document that could be admissible against the defendants as a document. We have no objection to his refreshing his recollection from it. It

(Testimony of Milton R. Evans.)

was a document prepared in relation to an investigation, and it would be as though Mr. Magee, Mr. Johnson, or any other Government officer sat up here and refreshed his recollection from a notebook, which these agents do. We have had it time and time again. He may use the notebook to refresh his recollection, but it is not admissible in evidence, and we submit an objection upon that ground. It is admissible in evidence if we offer it to contradict his testimony, which is the general rule, but it is not admissible to build up their case to have a witness testify on the witness stand from a writing and then put both testimony in and the the writings.

Mr. Pratt: Let me ask a question or two.

Q. Major Evans, in doing this work of examining these eggs, [2489] under whose direction were you working?

A. My commanding officer.

Q. Who was your commanding officer who gave you your orders?

A. At that time my immediate superior was Colonel Hand.

Q. By the way, in making this examination were you in uniform?

A. No sir, more commonly not in uniform at the time I examined these eggs.

Q. Did you have some authority to wear civilian clothing?

A. I had specific documentary authority for being out of uniform.

(Testimony of Milton R. Evans.)

Q. From whom?

A. From my post commander, signed by his adjutant.

Q. What was his name?

A. Colonel Montague was the post commander. The adjutant was Lieutenant Baker.

Mr. Faulkner: Your Honor, this is interesting, but I assume the witness's clothes are not going to be offered in evidence, and they have no relation to this case.

Mr. Pratt: The purpose is to show the confidential character of the investigation, and for that reason and the fact that he was acting under the orders of his superior officer in the Army I believe that these records made contemporaneously with the work that he did are admissible in evidence.

Mr. Faulkner: Your Honor, the egg grading certificates of the Department of Agriculture, all of which have been produced by the Government, are automatically admissible in [2490] evidence under the statute, because they are a record required to be kept by law. But there is no law requiring the Major——

The Court: Since these documents that he has refreshed his memory from are here for the purpose of identification, what further use will be made of them since he has testified and used them to refresh his memory?

Mr. Pratt: My only thought was for convenience in argument to the Jury.

(Testimony of Milton R. Evans.)

The Court: I am not prepared to say that you could not use them for that purpose, Mr. Faulkner.

Mr. Faulkner: It is an unusual thing to do, your Honor. In other words, I just feel under the law that is not admissible in evidence and I make the objection. Later we may offer them all in evidence or a summary.

The Court: Very well. At this time I will sustain Counsel's objection. You may at any future time renew your offer. Proceed.

Mr. Pratt: You may cross-examine.

Cross Examination

Mr. Faulkner: Q. Major, may I have those papers? I understand you graduated from Ohio State College in 1939?

A. Ohio State University.

Q. I mean Ohio State University. What course did you major in?

A. Veterinary medicine.

Q. What?

A. Veterinary medicine. [2491]

Q. Veterinary medicine?

A. That is correct.

Q. And did you receive a degree?

A. I did.

Q. In veterinary medicine? A. I did.

Q. In the course of that pursuit of your studies at the university you came in contact with the subject of agricultural products from time to time?

A. Yes sir.

Q. And eggs were one of them?

(Testimony of Milton R. Evans.)

A. Yes sir.

Q. Now, how long a course was it, Major?

A. The course in veterinary medicine was five years.

Q. How much of that time was devoted to eggs?

A. That is difficult to estimate because the subject was encountered in several of the subjects we covered. For example, the study of embryology of all animals basically is a study of the egg of the hen.

Q. In other words, that was an incidental study to your course in veterinary medicine, was it not?

A. Incidental?

Q. The embryonic study of eggs, how they are formed, how they are produced, is that right?

A. I wouldn't say it was incidental; it was a fundamental part of our teachings.

Q. But the fundamental part was the production of the egg and the care of the chicken, was it not?

A. In its relation to embryology. I had two specific courses in poultry husbandry which covered the production and care of poultry; storage and distribution of eggs was included in the course.

Q. And you, of course, read textbooks on the subject? [2492]

A. That is correct. Our subjects were taken in the poultry department of the Ohio State University.

Q. You learned at the very inception of your

(Testimony of Milton R. Evans.)

study that eggs were a perishable product, did you not? A. That is correct.

Q. And from then on your experience has demonstrated that eggs are a perishable product, has it not? A. That is true.

Q. After you graduated from the university in 1939, what business did you then follow?

A. I was associated with another veterinarian in the City and County of Honolulu for two years.

Q. What was the nature of the work carried on by that veterinarian?

A. It was what is designated as a general practice.

Q. Well, it primarily devoted itself to the care of cats and dogs, did it not? A. It did not.

Q. Did it have anything to do with chickens and eggs? A. No, it did not.

Q. Now, you left that employment, as I understand, and you then entered the Army?

A. No sir, I did not.

Q. Did you follow some other business after you left the veterinary establishment in Honolulu?

A. I did, I was associated with another veterinarian in Lenwood, California, for a period of almost a year and a half.

Q. Where? A. Lenwood, California.

Q. What was his name?

A. Dr. Leonard I. Beller.

Q. What phase of the veterinary business did he follow? [2493]

A. He operated a small animal practice.

(Testimony of Milton R. Evans.)

Q. A small what?

A. A small animal practice.

Q. A small animal practice? A. Yes sir.

Q. And you remained with him how long?

A. About a year and a half.

Q. That brings us to what year, having in mind that you graduated in 1939?

A. That brings us to 1942.

Q. Is that about the time that you went into the Army?

A. That is correct. I left there to go into the service.

Q. You naturally entered the Veterinary Corps, is that right? A. That is correct.

Q. After you entered the Veterinary Corps you took a course of study that lasted, I think you said, fifteen weeks?

A. You mean the specific Army course?

Q. Yes. How long did that last?

A. That was six weeks.

Q. What were the subjects that you gave attention to in that six weeks?

A. The inspection of all meat and dairy products.

Q. How long each day did you devote to the course?

A. From eight in the morning until five in the afternoon, Monday through Saturday.

Q. In other words, it was a very compressed course?

(Testimony of Milton R. Evans.)

A. It was an intensified course, yes sir.

Q. And I assume, Major, it was usually given to men who had had some background?

A. That is correct. Its purpose was [2494] not to fundamentally instruct, but to coordinate.

Q. Now, after that six weeks course you then started on your duties with the Army?

A. I did not. I previously had been on duty for some time before attending that course.

Q. During the period of time up to the time you took this course what were your duties?

A. For a period of about six months I was assistant Station Veterinarian, and the majority of our work consisted of the study and practical training in the subjects that we were required to inspect.

Q. What were the products that you primarily devoted your atention to?

A. Poultry, eggs, meat, meat products, fish, dairy products.

Q. Were you experienced in the candling of eggs prior to going to that school?

A. Before going to this school?

Q. Yes. A. Definitely, yes.

Q. Were you experienced in the handling of the eggs before the candle light before you went to this school? A. I was.

Q. Have you ever candled eggs in the plant of Nye & Nissen? A. I have.

Q. At the time you first went there do you feel that you were an experienced candler of eggs in that plant before the light?

(Testimony of Milton R. Evans.)

A. The first time I candled eggs there as an inspector, yes. As I stated, it was some period of time before we were permitted to work independently as inspectors. [2495]

Q. What year was that?

A. That I first visited Nye & Nissen?

Q. Yes. A. As an inspector?

Q. Yes.

A. Probably the fore part of 1943.

Q. The fore part of 1943? A. Yes.

Q. In 1943 or somewhere about that time I understood you to say that you had an assignment with the Presidio. A. That is correct.

Q. Who was your commanding officer?

A. Colonel Hand.

Q. At all times that you were at the Presidio?

A. He was my immediate superior officer, if that is what you mean—not all the time I was at the Presidio. He left the Presidio some time in the fore part of 1944.

Q. Well, when you went out there, regardless of when you left or when he left, he was your commanding officer? A. That is correct.

Q. And remained your commanding officer until either he left or you went to a different assignment?

A. That is correct.

Q. Did he give you any instructions or suggestions about the mode of carrying on your work under his command?

A. He generally supervised the office study of these subjects. It was very infrequent that he con-

(Testimony of Milton R. Evans.)

ducted the classes of instruction on the actual practical training.

Q. Did you ever candle eggs with Colonel Hand?

A. I have.

Q. On many occasions?

A. On numerous occasions. [2496]

Q. Did you as the junior officer attempt to follow in your practice under him the methods and the standards and the means used by him?

A. I wouldn't say so, no sir. I would say that I tried to follow the instructions that had been given us on the practical application of the inspection of eggs as they appeared before the candle. In other words, the opinion I rendered rather than the one rendered by my suprior officer.

Q. I mean you had experience in the candling of eggs and you had a well grounded education in the veterinarian field, and you entered into a service under the command of Colonel Hand. Did you in performing that duty attempt to accommodate yourself to the mode and the standards and the methods that had been created before you came there by Colonel Hand in relation to examining eggs in particular?

A. If it can be presumed that the men that I got my practical trainng from were trained by Colonel Hand, the answer would be yes. Otherwise no, because until the time that Colonel Hand and I had occasion to grade eggs together, I had had none of the practical training other than the book training by Colonel Hand.

(Testimony of Milton R. Evans.)

Q. But later after you were there you graded eggs with Colonel Hand on many occasions?

A. Yes.

Q. After you left the Presidio I understood you went to the Quartermaster Center?

A. A Quartermaster Market Center in [2497] San Francisco.

Q. There was a period, was there not, when the Presidio bought its eggs itself for various camps?

A. Not subsequent to the time I came to duty here.

Q. What was the duty or the purpose of the Quartermaster Center Corps?

A. A centralized procurement agency for the procurement and distribution of perishable subsistences.

Q. For the armed forces?

A. That is right.

Q. Do you remember when that came into existence?

A. It was established prior to my coming to duty. I believe it was some time in the latter part of 1941 or the fore part of 1942. I have no specific knowledge of my own as to that date.

Q. When it did come into existence did the Presidio likewise still continue to buy and examine eggs?

A. There was to the best of my knowledge only one agency that procured eggs directly, and that was the Sales Commissary, which purchosed products intended for resale to army personnel living on the

(Testimony of Milton R. Evans.)

post of the Presidio; but for issue items going to troops, procurement was supposed to be entirely through the Quartermaster Market Center service.

Q. What was the date that you went to them?

A. In September of 1944.

Q. September, 1944? A. Yes sir. [2498]

Q. That was subsequent to the transactions that you have been testifying to, is that correct?

A. That is correct.

Q. In other words, what was the duty that you were performing, what was your assignment in the Army in April and May of 1944?

A. I was Assistant Station Veterinarian at the Presidio of San Francisco. I would say about three months of that I was acting as Station Veterinarian.

Q. In the period from the time the Quartermaster Marketing Center took over the purchase of supplies up to the month of April or May did you have daily contact with the handling and the inspection of eggs?

A. Would you repeat the question? I don't believe I understand it clearly.

Q. I think it is a little awkward. In other words, the Quartermaster Marketing Center had come into existence in 1941 or early 1942, and you went with them in September of 1944?

A. Yes sir.

Q. Now, in the period when you were at the Presidio in April or May, and prior to that, were you in daily contact with the handling and candling and the inspection of eggs?

(Testimony of Milton R. Evans.)

A. Yes sir.

Q. What else did you do?

A. I believe I previously testified that I was functioning as a supervising inspector, that I travelled to various cities in this area where we had inspectors stationed and amongst the inspectors in this area that [2499] we were responsible for.

Q. What were those inspectors doing? Were they inspecting poultry, eggs and meat?

A. All products that we were responsible for.

Q. And agricultural products as well?

A. All products of animal origin, the type of product that we inspect.

Q. What proportion of your time was devoted to the handling of eggs in, say, a period of a year prior to your being down there on the waterfront with the FBI men?

A. I believe that I previously estimated approximately forty percent.

Q. Forty percent? A. Yes.

Q. In the inspecting and candling of eggs?

A. Yes.

Q. And that would be throughout the state?

A. In the northern part of the state here.

Q. In what places have you candled eggs prior to April and May in the year prior to that?

A. In San Jose, San Francisco, Oakland, Petaluma, Santa Rosa. That is all I recall at the moment.

Q. Now, the examinations made by you of eggs and your determinations of the quality of eggs dur-

(Testimony of Milton R. Evans.)

ing that period of time, what was your guide? What orders of oral directions did you receive? What orders, what regulations?

A. Army regulations specify that we will be guided by the promulgation of standards [2500] for shell eggs by the Department of Agriculture, and those are further modified by army directives or some deviations from that code.

Q. There were army directives issued in writing from time to time which were the basis of the determining of the quality of eggs by the army inspectors, is that not so? A. That is correct.

Q. And they deviated in some instances slightly and in some definitely from the rules of the Department of Agriculture, isn't that correct?

A. Well, I couldn't call any of them marked deviations. Fundamentally they are the same.

Q. You were examining eggs, were you not, under a standard called a U. S. Procurement Grade?

A. We bought eggs under both the Procurement grades and the Consumer grades.

Q. The Procurement grade is a Consumer grade, is it not?

A. Well, it is a modification of a Consumer grade, shall we say.

Q. What is the difference between a U. S. Procurement Grade 1 egg and U. S. Grade AA?

A. Well, it is a difference of one entire Consumer grade A Procurement Grade 1 is the same as a U. S. Consumer Grade A.

(Testimony of Milton R. Evans.)

Q. What letter grade would correspond with a Procurement 2?

A. It would be a modified Grade A that had dropped—or it may have twenty percent less Grade A eggs than a Procurement 1. [2501]

Q. It is a little better than a Grade B though, is it not. A. Oh yes.

Q. Now, in the period of April and May of 1944 and in a period considerably prior to that time it is a fact, is it not, Major, that the usual method of handling eggs in the department that you were in was that any quantity of eggs which were purchased by the Army and were graded, for illustration, Grade AA, would be accepted at the point of destination if they graded A, isn't that correct?

A. It would depend on whether it was a carload lot or less than a carload lot or a truckload lot.

Q. Isn't it a fact that it was the general practice of the Army that if a firm like Nye & Nissen sent U. S. Procurement 1's or Grade A or Grade AA from their plant in Petaluma around the corner to the ice house that if they graded A they would be accepted as B at the icehouse; if they graded AA they would be accepted as A at the icehouse; and if they graded Procurement 1 they would be accepted as Procurement 2 at the icehouse, isn't that the fact?

A. No sir, your latter statement that a grade would be accepted—that a Procurement 1 would be accepted as a Procurement 2 and the other provi-

(Testimony of Milton R. Evans.)

sions that you have made depended on a clause included on the back of every purchase order issued for the purchase of eggs, and that clause was based fundamentally upon whether it was a carload lot or less than a carload lot. [2502]

The Court: It is now time to take a recess.

(Recess.)

Mr. Faulkner: Q. In connection with your examining of eggs for the Army during the period April and May, 1944, and prior to that time, how would you inspect eggs, Major, in a plant similar to the Nye & Nissen plant?

A. You mean the procedure?

Q. Yes.

A. On coming into the plant a lot would be designated to us as being a lot offered us on a certain contract, and we would sample that lot on the basis of 5 percent of the number of cases offered.

Mr. Pratt: If the Court please, this question is not at all within the range of the direct examination of the witness. He was interrogated on the examination of eggs on these various ships. It seems to me that counsel is getting way beyond the proper range of cross-examination when he asks specifically about the method and practice of examining eggs at the plant of Nye & Nissen. That is not involved in the testimony of this witness on his direct examination at all. I object to it.

Mr. Faulkner: Your Honor, there are various bases of the admissibility of the testimony. The witness has presumed—not presumed, that is the

(Testimony of Milton R. Evans.)

wrong word—has expressed an opinion as an expert. In other words, we have here a situation where an opinion has been expressed as to quality which is unusual, I think your Honor will agree with me, where the article is not here and where it cannot be exhibited. I think I am entitled to a very wide latitude on determining the full qualifications of a man who has expressed the opinion that he has. When comes the question of the manner in which he arrived at the opinion aboard ship; and I am entitled to contrast, if there is a contrast, what the method of inspecting eggs in a plant and the method of the witness in determining the quality of certain eggs on a ship.

The Court: I will allow it. Objection is overruled. Answer.

Mr. Faulkner: Do you remember the question?

A. I believe I answered.

Q. What was the usual method of inspecting eggs in April or May, or prior to the time, in the course of your duties in the Army, in the plant, we will say, of Nye & Nissen?

A. We would examine the lot offered to us on a contract on the basis of 5 percent of the number of cases present, candle the eggs. Those eggs would be pulled from the flats or wherever they would be stacked and taken to a candling booth or a suitable place for candling eggs, and we would remove and examine 100 eggs from each of these sample cases, pulling those 100 eggs from various locations in that case, some out of the top, some out from the